

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JAMES SHARKEY.

Case No. 2:19-cv-001170-RFB-GWF

v.

Plaintiff.

SCREENING ORDER

MICHAEL VILLANI, *et al.*,

Defendants.

Plaintiff, who is incarcerated in the custody of the Nevada Department of Corrections ("NDOC"), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, and has filed an application to proceed *in forma pauperis*. (ECF No. 1). The Court now screens Plaintiff's civil rights complaint under 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See id. §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act (“PLRA”), a federal court must dismiss an incarcerated person’s claim if “the allegation of poverty is untrue” or if the action “is frivolous or malicious, fails

1 to state a claim on which relief may be granted, or seeks monetary relief against a
2 defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2). Dismissal of a
3 complaint for failure to state a claim upon which relief can be granted is provided for in
4 Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under
5 § 1915 when reviewing the adequacy of a complaint or an amended complaint. When a
6 court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend
7 the complaint with directions as to curing its deficiencies, unless it is clear from the face
8 of the complaint that the deficiencies could not be cured by amendment. See Cato v.
9 United States, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
11 Chappel v. Lab. Corp. of Am., 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to
12 state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
13 support of the claim that would entitle him or her to relief. See Morley v. Walker, 175 F.3d
14 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
15 allegations of material fact stated in the complaint, and the court construes them in the
16 light most favorable to the plaintiff. See Warshaw v. Xoma Corp., 74 F.3d 955, 957 (9th
17 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
18 formal pleadings drafted by lawyers. See Hughes v. Rowe, 449 U.S. 5, 9 (1980). While
19 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
20 must provide more than mere labels and conclusions. See Bell Atl. Corp. v. Twombly,
21 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
22 insufficient. See Id.

23 Additionally, a reviewing court should "begin by identifying pleadings [allegations]
24 that, because they are no more than mere conclusions, are not entitled to the assumption
25 of truth." Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009). "While legal conclusions can provide
26 the framework of a complaint, they must be supported with factual allegations." Id. "When
27 there are well-pleaded factual allegations, a court should assume their veracity and then
28 determine whether they plausibly give rise to an entitlement to relief." Id. "Determining

1 whether a complaint states a plausible claim for relief . . . [is] a context-specific task that
2 requires the reviewing court to draw on its judicial experience and common sense." Id.

3 Finally, all or part of a complaint filed by an incarcerated person may be dismissed
4 *sua sponte* if that person's claims lack an arguable basis either in law or in fact. This
5 includes claims based on legal conclusions that are untenable (e.g., claims against
6 defendants who are immune from suit or claims of infringement of a legal interest which
7 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
8 fantastic or delusional scenarios). See Neitzke v. Williams, 490 U.S. 319, 327–28 (1989);
9 see also McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

10 **II. SCREENING OF COMPLAINT**

11 In the complaint, Plaintiff sues the Honorable Michael Villani, District Court Judge
12 of the Eighth Judicial District of Nevada, Clark County Nevada, and Clark County Sheriff
13 Joe Lombardo. Plaintiff alleges in Count One violations of his First Amendment "free
14 speech" rights, Sixth Amendment "assistance of counsel" rights," and Fourteenth
15 Amendment "due process and equal protection" rights while he was a pretrial detainee.
16 He alleges in Count Two a violation of his Eighth Amendment rights regarding bail for
17 Judge Villani's decisions regarding his bail conditions.

18 The Court finds that the Plaintiff's claims against Judge Villani are barred by judicial
19 immunity as the claims are directed toward his rulings. Meek v. County of Riverside, 183
20 F.3d 962, 956-66 (9th Cir. 1999). The Court finds that the claims against the other
21 defendants are derivative of the claims against Judge Villani and cannot stand if the
22 claims attacking his orders are barred.

23 The Court further finds that the claims in Count One are barred by Heck v.
24 Humphrey, 512 U.S. 477 (1994) since Plaintiff's claims challenge the validity of his
25 conviction and, by implication, his custody and Plaintiff's conviction has not, as far as the
26 Court is aware, been overturned. Id. at 486-87.

27 Court dismisses these Defendants from the entirety of this case without prejudice.
28

1 **III. CONCLUSION**

2 For the foregoing reasons,

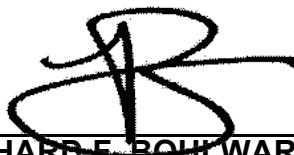
3 IT IS ORDERED it is ordered that a decision on the application to proceed *in forma*
4 *pauperis* (ECF No. 1) is deferred.

5 IT IS FURTHER ORDERED that the Clerk of Court shall file the Complaint in this
6 case and that the Complaint is dismissed. The Clerk of Court is ordered to close this case.

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8 DATED: May 13, 2021.

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RICHARD E. BOULWARE II
11 United States District Court

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